

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRIAN LAMAR BROWN,

Petitioner,

vs.

ATTORNEY GENERAL FOR THE
STATE OF NEVADA AND ISIDRO
BACA, *et al.*,

Respondents.

Case No. 2:02-cv-00770-GMN-PAL

ORDER

This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by a Nevada state prisoner represented by counsel.

By order filed July 5, 2013, this Court granted respondents' motion to dismiss this action on the basis that the amended petition did not relate back to the original petition and that the claims were therefore time-barred. (ECF No. 55). Judgment was entered on July 5, 2013. (ECF No. 56). Petitioner appealed. (ECF No. 58). On June 2, 2015, the United States Court of Appeals for the Ninth Circuit filed an unpublished memorandum opinion which concludes: "Accordingly, we reverse the judgment of the district court and remand with instructions that the district court rule on the merits of the properly exhausted claims in Brown's original petition." (ECF No. 71, at p. 4). Previously, by order filed November 24, 2003, this Court ruled that the properly exhausted claims in Brown's original petition are Grounds 3-6, Ground 17, and Ground 1A.¹ (ECF No. 20, at pp. 10-12, 22). Respondents are now required to file an answer addressing the merits of the properly exhausted claims in Brown's original petition. Thereafter, petitioner shall file a reply to the answer.

¹ Ground 1A, which alleges that the state district court erred in denying petitioner's claim that he was improperly denied a jury instruction critical to his theory of the case, was presented in petitioner's filing of April 11, 2003. (ECF No. 19, at p. 8). In the order filed November 24, 2003, the Court deemed Ground 1A "an additional claim" to original petition. (ECF No. 20, at p. 12).

1 **IT IS THEREFORE ORDERED** that the Clerk of Court **SHALL REOPEN** this action.

2 **IT IS FURTHER ORDERED** that, within **forty-five (45) days** from the date of entry of
3 this order, respondents **SHALL FILE AND SERVE AN ANSWER** addressing the merits of
4 Grounds 3-6, Ground 17, and Ground 1A of the original petition.

5 **IT IS FURTHER ORDERED** that, within **forty-five (45) days** from the date of entry of
6 this order, respondents **SHALL SEND** to the **Reno** Division of this Court, courtesy (paper) copies
7 of all exhibits previously filed in this action, including the exhibits at ECF Nos. 15 and 16², as well
8 as ECF Nos. 38, 39, 41, 42, 43, 44, 45, 46, and 47. Courtesy copies shall be mailed to the Clerk of
9 Court, 400 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the
10 outside of the mailing address label. Additionally, all parties shall provide courtesy copies of any
11 additional exhibits submitted to the Court in this case, in the manner described above.

12 **IT IS FURTHER ORDERED** that petitioner **SHALL FILE AND SERVE A REPLY** to
13 the answer, within **forty-five (45) days** after being served with the answer.

14 **DATED** this 23rd day of July, 2015.

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19 Gloria M. Navarro, Chief Judge
20 United States District Court
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28 ² Courtesy copies of the exhibits at ECF Nos. 15 and 16 need only be sent to the Court if
they are not duplicated in the later-filed exhibits.